

We thank the Department of Planning and Infrastructure with the opportunity to lodge a submission in response to this project.

While we are not currently seeking for the project to be refused, there have been some major issues in the way the conduct for the purpose of the Environmental Impact Assessment (EIS) has been carried out.

The Director General's requirements (DGRs) for the EIS were issued 19 January 2012. Part of the DGRs included an Aboriginal cultural heritage assessment. The cultural heritage assessment must demonstrate both effective consultation with Aboriginal communities and outline any proposed mitigation and management measures. A list of technical and policy guidelines were attached to DGRs to assist in the preparation of the EIS, including:

- Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation (DEC 2005);
- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011);
- Due diligence code of practice for protection of Aboriginal objects in NSW (DECCW 2010);
- Aboriginal cultural heritage consultation requirements for proponents 2010 (DECCW);
- Code of practice for archaeological investigation of Aboriginal objects in NSW (DECCW 2010); and
- The Burra Charter

We note of great interest in the Aboriginal cultural heritage consultation requirements for proponents 2010 (consultation requirements 2010) at part 1.3:

*In recognising the rights and interests of Aboriginal people in their cultural heritage, all parties concerned with identifying, conserving and managing cultural heritage should acknowledge, accept and act on the principles that Aboriginal people:*

- ***are the primary source of information*** about the value of their heritage and how this is best protected and conserved
- ***must have an active role*** in any Aboriginal cultural heritage planning process
- ***must have early input into the assessment*** of the cultural significance of their heritage and its management so they can continue to fulfil their obligations towards their heritage
- ***must control the way in which cultural knowledge and other information relating specifically to their heritage is used, as this may be an integral aspect of its heritage value.***

Part 3 of the *consultation requirements 2010* further defines what effective consultation should consist of, being:

- consultation by proponents with Aboriginal people in the early stages of project planning

- building a shared understanding, between the proponent and Aboriginal people, of how advice from Aboriginal people will inform project design or decision-making processes
- building a shared understanding between the proponent and Aboriginal people of how timely feedback will be provided to participants to ensure their views were accurately taken into account and to show how the information provided by Aboriginal people contributed to the final outcome
- adherence to cultural restrictions by the proponent (e.g. Aboriginal men's business should only be discussed by men with men, and Aboriginal women's business only between women)
- avoiding culturally inappropriate days/times for consultation (e.g. NAIDOC week) and having a contingency plan should the planned consultation unexpectedly fall on the day of a funeral or other 'sorry business'
- consideration by the proponent of issues such as transport (how Aboriginal people get to meetings) and fitting in with work and family responsibilities

Further, Article 5.1 of the Burra Charter provides:

*Conservation of a place should identify and take into consideration all aspects of cultural and natural significance without unwarranted emphasis on any one value at the expense of others.*

After we had read the Aboriginal cultural heritage assessment of the EIS and compared them to the above technical and policy guidelines, we have a few concerns outlined in the headings below.

### **Surveys conducted and results**

We view that the site area has not been surveyed properly and estimate about 40% of the land still unsurveyed. Some of this land unsurveyed include former creek beds and bushland. We agree that sources of water are great places to survey for our cultural heritage. However, this should still include areas of past potential resources for our people as well. Our past surveys in these similar areas have a much greater likelihood of finding parts of our heritage and it is a shame that our cultural heritage on these unsurveyed lands will not be managed at all.

One of these sites that will not be protected as it was not adequately assessed is a rock formation found about 600m East of Hoad Lane (attached is a map of Figure 2 of the Aboriginal heritage assessment with markings). In December 2011, myself (as T'N'L Site Trackers) and fellow traditional owner Leonard Talbot were surveying part of the project area for our cultural heritage, along with Mr Lance Syme of Kayandal Archaeological Services (for Whitehaven). During the survey we discovered a rock formation described above and found that it was quite significant. However, the nature of the exact significance was not clear enough and we agreed with Mr Syme

to do a controlled fire operation around the rock formation after the bushfire season (March 2012).

We were not informed about any further progress of assessing the site after March 2012 and it was only until Mid-October 2012 that I decided to call Mr Danny Young, the Group Environmental Manager for Whitehaven Coal Limited. Mr Danny Young and I had the following conversation in words to the effect:

Myself: *What is happening with the Rock formation?*

Mr Young: *there's nothing special there.*

Myself: *who said that?*

Mr Young: *Phil Purcell*

Myself: *were any of the Traditional owners there?*

Mr Young: *No, just myself, Phil and two archaeologists*

We understand Mr Phil Purcell is an archaeologist with the Office of Environment and Heritage NSW.

### **Consultation**

Although we acknowledge the efforts made by Whitehaven to engage with Aboriginal stakeholders it is our concern that other registered Aboriginal stakeholders, despite leaving the meeting on 12 September 2012 with an expectation that there would be further consultation, were not invited or informed of the ensuing meeting and site inspection held on 19 September and 1 November respectively.

I understand that the subsequent meetings were held specifically for the purpose of consulting with the so-called "senior elders" group. We understand that a Kamilaroi elder, Auntie Rita Long, attempted to attend the meeting on 19 September 2012 but she was excluded by one of the meeting participants because she was not a 'senior elder'. Some of the members of this group do not have any cultural ties to the project area, although they are elders. The senior elders group does not speak on my behalf, nor on behalf of any other Kamilaroi people without their written consent and provision of contact details as required under part 4.1.8 of the *NSW Office of Environment and Heritage Consultation requirements for Proponents 2010* (2010 Consultation Requirements). Therefore, the representative capacity of the elders group is limited to only those individuals in the group, and they do not collectively speak for country.

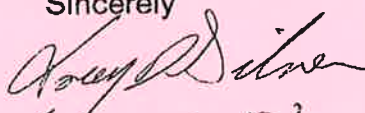
I would like to express my deepest disappointment that Whitehaven has excluded the registered stakeholders from aspects of the consultation process in circumstances where there was no justification for such exclusion.

Whitehaven's approach in targeting aspects of consultation with the senior elders group has created a culture of lack of confidence in the process and is seen to be a means of circumventing the requirements to consult with the broader registered stakeholders. We are very concerned with the lack of involvement with the Traditional Owners in the making of this decision about the management of this site, particularly those Traditional Owners that were involved early in the consultation and survey stage.

We would appreciate that the proponents of the Project properly engage and consult with the Traditional Owners in conducting the Environmental Impact Statement as their consultation has been inadequate to take in to account our concerns.

The manner in which the consultation and survey has been carried out is unfair to the traditional owners and there is a strong feeling that this has caused many of us to fear divulging information in relation to our most sensitive areas as we are afraid of what might happen to them.

Sincerely

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